

1 JAMES W. HUSTON (BAR NO. 115596)  
jhuston@mofo.com  
2 ERIN M. BOSMAN (BAR NO. 204987)  
ebosman@mofo.com  
3 WILLIAM V. O'CONNOR (BAR NO. 216650)  
woconnor@mofo.com  
4 JOANNA E. HERMAN (BAR NO. 227480)  
jeherman@mofo.com  
5 MORRISON & FOERSTER LLP  
12531 High Bluff Drive, Suite 100  
6 San Diego, California 92130-2040  
Telephone: 858.720.5100  
7 Facsimile: 858.720.5188

Attorneys for Defendant  
**HONEYWELL INTERNATIONAL INC.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DEBORAH GETZ, et al.,

**Plaintiffs,**

V.

**THE BOEING COMPANY, et al.,**

## Defendants.

Case No. CV 07-06396 CW

**DEFENDANT HONEYWELL  
INTERNATIONAL INC.'S NOTICE  
OF MOTION AND MOTION FOR  
PROTECTIVE ORDER;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Date: June 19, 2008  
Time: 2:00 p.m.  
Courtroom: 2  
Judge: Hon. Claudia Wilken

## **NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on June 19, 2008, at 2:00 p.m., or as soon thereafter as the  
4 matter may be heard, in the Courtroom of the Honorable Claudia Wilken, United States District  
5 Court, Northern District of California, Oakland Division, Courtroom 2, 4th Floor, 1301 Clay  
6 Street, 400 South, Oakland, California 94612, Defendant Honeywell International, Inc.  
7 (“Honeywell”) will move the Court for a protective order staying the time in which Defendants  
8 must respond to Plaintiffs’ outstanding discovery requests.

9 Honeywell moves this Court for a protective order staying the time in which Honeywell  
10 must respond to Plaintiffs' outstanding discovery requests until after the resolution of  
11 Honeywell's Motion to Stay Discovery and Honeywell's Motion to Dismiss. There is good cause  
12 for a protective order because: (1) Honeywell has filed a dispositive motion; (2) the requested  
13 stay is for a short period of time; and (3) Plaintiffs will not be prejudiced by the stay.

14 Honeywell bases its motion on this Notice of Motion and Motion, the accompanying  
15 Memorandum of Points and Authorities, the pleadings and papers on file herein, and on such  
16 other matters as may be presented to the Court at the time of the hearing.

17 Pursuant to Rule 26(c)(1) of the Federal Rules of Civil Procedure, Honeywell certifies that  
18 on April 29, 2008, Joanna E. Herman, counsel for Honeywell, conferred with Mr. Thomas J.  
19 Brandi, counsel for Plaintiffs, in a good faith effort to resolve this dispute without Court action.  
20 (See Declaration of Joanna E. Herman in Support of Defendant Honeywell International, Inc's  
21 Motion for Protective Order ("Herman Decl.") at ¶¶ 2-7.) At that time, Mr. Brandi indicated that  
22 after he reviewed Honeywell's Motion to Stay Discovery and Motion to Dismiss, he would  
23 inform Honeywell whether Plaintiffs would agree to stay the outstanding discovery responses.  
24 (Id. at ¶ 4.) On April 29, 2008, Honeywell's Motion to Dismiss and Motion to Stay Discovery  
25 were filed. (Id. at ¶ 5.) On April 30 and May 5, 2008, Ms. Herman contacted Mr. Brandi by e-  
26 mail to determine Plaintiffs' position with respect to the present motion. (Id. at ¶¶ 6-7.) No  
27 response was received. (Id.) Thus, Honeywell hereby files this motion for a protective order.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

This motion is filed in response to the Requests for Admission (RFAs) that Plaintiffs recently propounded upon Honeywell and the other Defendants. In light of Honeywell’s pending Motion to Dismiss and Motion to Stay Discovery, Honeywell seeks a protective order for the limited purpose of staying the RFA responses, and any other discovery Plaintiffs may serve, until after the resolution of the pending motions. Good cause exists for the protective order, because Honeywell’s Motion to Dismiss is potentially dispositive of the entire case, the requested stay is for a short period of time, and Plaintiffs will not be prejudiced by the stay.

## **II. STATEMENT OF FACTS**

This case arises from the crash of a United States Army Special Operations Aviation Regiment (“SOAR”) MH-47E Chinook helicopter, serial number 92-00472 (the “subject helicopter”), in the early morning hours of February 18, 2007, in the Shahjoi District of the Zabul Province in Afghanistan (the “Accident”). The Accident took the lives of eight military personnel who died in the line of duty, as well as injuring fourteen military personnel.

Plaintiffs sued Honeywell, The Boeing Company, Goodrich Corporation, BF Goodrich Aerospace, Chandler Evans Control Systems and General Electric<sup>1</sup> seeking damages for wrongful death, bodily injuries and loss of consortium based on theories of negligence, strict product liability, and breach of express and implied warranty. Because the nature of the Accident upon which Plaintiffs' complaint is based involves political questions dedicated to the executive and/or legislative branches, on April 29, 2008, Honeywell moved for dismissal of the complaint under the political question doctrine. At the same time, Honeywell moved for a stay of all discovery pending the resolution of the Motion to Dismiss.

On or about April 17, 2008 Plaintiffs' counsel, Thomas J. Brandi, sent a letter to counsel for Honeywell, Boeing, and Goodrich Pump and Engine Control Systems requesting the parties to meet and confer on the scheduling of depositions for the custodian of records for each Defendant.

<sup>1</sup> Plaintiffs have voluntarily dismissed General Electric. (Docket No. 33)

1 No depositions have actually been noticed. On April 22, 2008, Plaintiffs served Requests for  
 2 Admission (RFAs) on each Defendant.

3           **III. THERE IS GOOD CAUSE TO GRANT A PROTECTIVE ORDER IN THIS  
 4 CASE**

5 Rule 26(c) of the Federal Rules of Civil Procedure authorizes courts for “good cause” to  
 6 issue a protective order to stay discovery. Fed. R. Civ. P. 26(c)(1); *Spencer Trask Software &*  
*Info. Servs. v. RPost Int'l*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002). Although a stay is not  
 7 automatic, “[g]ood cause may be shown where a party has filed a dispositive motion, the stay is  
 8 for a short period of time, and the opposing party will not be prejudiced by the stay.” *Spencer*,  
 9 206 F.R.D. at 368; *see also In re Netflix Antitrust Litig.*, 506 F. Supp. 2d 308, 321 (N.D. Cal.  
 10 2007) (“District courts have broad discretion to stay discovery pending the resolution of a  
 11 potentially dispositive motion, including a motion to dismiss.”); *Little v. Seattle*, 863 F.2d 681,  
 12 685 (9th Cir. 1988); *Rae v. Union Bank*, 725 F.2d 478, 481 (9th Cir. 1984). Here, good cause  
 13 exists, because Honeywell has filed a dispositive motion that has a high likelihood of success, the  
 14 requested stay of discovery will last only until the motion to dismiss is decided, and Plaintiffs will  
 15 not be prejudiced by the stay. A stay of the RFA responses is therefore warranted.

16           **A. The Motion To Dismiss Has A High Likelihood Of Success**

17 Honeywell filed its Motion to Dismiss, pursuant to Rule 12(b)(1), on April 29, 2008. As  
 18 described in the Motion to Stay Discovery that accompanied the Rule 12(b)(1) motion, there is a  
 19 high likelihood of Plaintiffs’ complaint being dismissed as nonjusticiable under the political  
 20 question doctrine. (*See* Motion to Stay Discovery at 5-8.) Consequently, responses to Plaintiffs’  
 21 RFAs should be stayed pending the resolution of the Motion to Dismiss.

22           **B. The Requested Stay Is For A Short Period Of Time**

23 Honeywell requests that the stay to respond to the RFAs be in place until a reasonable  
 24 period of time after the Motion to Dismiss and Motion to Stay Discovery are decided. These two  
 25 motions are scheduled for oral argument on June 19, 2008 at 2:00 p.m. Should the Motion to  
 26 Dismiss be denied, the RFA responses would be due, at most, within 30 days following denial.  
 27 Thus, the length of the requested stay is on the order of two to three months, depending on the  
 28

1 timing of the Court's order following the June 19, 2008 oral argument. Such a short stay supports  
 2 the entry of a protective order to avoid unnecessary expenditure of resources. Fed. R. Civ. P.  
 3 26(c).

4 **C. Plaintiffs Will Not Be Prejudiced By A Stay**

5 This case is in its infancy, and Plaintiffs will not be prejudiced by a short stay of discovery  
 6 pending the resolution of the Motion to Dismiss. *See In re First Constitution Shareholders Litig.*,  
 7 145 F.R.D. 291, 294 (D. Conn. 1991) (granting defendants' motion for a stay of discovery after  
 8 finding there would be no prejudice to plaintiff, "which will have ample time [if the motion to  
 9 dismiss is denied] to take discovery on the merits of its claims") (quotation marks omitted). The  
 10 U.S. Army investigation regarding the cause of the Accident is still ongoing. Moreover, the  
 11 earliest this case will proceed to trial is November 2009 (and likely later), with discovery to be  
 12 conducted for at least a year.

13 In addition, it is appropriate for a court to stay discovery pending the disposition of a  
 14 motion to dismiss, when discovery is not required to resolve any factual issues raised in the Rule  
 15 12(b) motion. *Jarvis v. Regan*, 833 F.2d 149, 155 (9th Cir. 1987). Honeywell's Motion to  
 16 Dismiss raises no disputed factual issues, and Plaintiffs will not be harmed or prejudiced by a  
 17 short stay of discovery while that motion is resolved. Indeed, a stay in the RFA responses will  
 18 potentially avoid unnecessary burden and expense, because the discovery will become moot if the  
 19 Motion to Dismiss is granted. *See, e.g., Atlantic States Legal Found., Inc. v. Tyson Foods, Inc.*,  
 20 897 F.2d 1128, 1131 (11th Cir. 1990) (granting motion to stay discovery on the merits until  
 21 motion to dismiss was resolved). Thus, while the Motion to Dismiss is pending, the burden and  
 22 expense of the propounded discovery outweigh any benefit to Plaintiffs. *See* Fed. R. Civ. P.  
 23 26(b)(2)(C)(iii).

24 **D. Honeywell Need Not Respond To Plaintiffs' Discovery Requests While  
 25 This Motion Is Pending**

26 Courts in the Ninth Circuit treat the filing of a motion for a protective order to stay  
 27 discovery as a *de facto* stay of any outstanding responses. *See, e.g., Skellerup Indus. v. City of*  
*28 Los Angeles*, 163 F.R.D. 598, 600 (C.D. Cal. 1995) (where defendants sought protective order to

1 stay discovery in light of pending motion to dismiss, responses to existing discovery requests  
2 were not due until after court ruled on motion to stay); *Vivendi, S.A. v. T-Mobile USA, Inc.*, No.  
3 C06-1524JLR, 2007 U.S. Dist. LEXIS 28710, \*3 (W.D. Wash. Apr. 18, 2007) (same); *White v.*  
4 *Am. Tobacco Co.*, 125 F.R.D. 508, 510 (D. Nev. 1989) (same). Thus, Honeywell believes it  
5 should not be required to respond to the RFAs, or any other discovery that Plaintiffs may  
6 propound, until the Court has ruled on the pending motions to dismiss and motion to stay  
7 discovery.<sup>2</sup>

#### IV. CONCLUSION

9       For the foregoing reasons, Honeywell requests that the Court enter a protective order  
10      staying the responses to the propounded discovery until a ruling is made on Honeywell's Motion  
11      to Dismiss and Motion to Stay Discovery.

Dated: May 6, 2008

MORRISON & FOERSTER LLP

By: /s/ James W. Huston  
James W. Huston

Atorneys for Defendant  
**HONEYWELL INTERNATIONAL, INC.**

<sup>2</sup> Honeywell is also not required to specifically move for a protective order regarding any depositions, because despite Plaintiffs' April 17, 2008 correspondence, no deposition notices have been served upon Honeywell.

## **CERTIFICATE OF SERVICE**

I, James W. Huston, hereby certify that on May 6, 2008, I caused to be electronically filed a true and correct copy of the attached **DEFENDANT HONEYWELL INTERNATIONAL INC.'S NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record for Plaintiffs:

<p>Ronald A. McIntire, Esq.  Chung H. Han, Esq.  <b>PERKINS COIE LLP</b>  1620 26<sup>th</sup> Street, Sixth Floor, South Tower  Santa Monica, CA 90404-4013</p>	<p>Telephone: 310.788.9900  Facsimile: 310.788.3399  <b>Attorneys for Defendant The Boeing Company</b></p>
<p>Thomas J. Brandi, Esq.  Daniel Del'Osso, Esq.  Brian J. Malloy, Esq.  <b>THE BRANDI LAW FIRM</b>  354 Pine Street, Third Floor  San Francisco, CA 94104</p>	<p>Telephone: 415.989.1800  Facsimile: 415.989.1801  <b>Attorneys for Plaintiffs</b></p>
<p>James R. Donahue, Esq.  <b>CAULFIELD DAVIES &amp; DONAHUE</b>  1 Natoma Street  Folsom, CA 95630-2637</p>	<p>Telephone: 916.817.2900  Facsimile: 916.817.2644  <b>Attorneys for Plaintiffs</b></p>
<p>Garth Aubert, Esq.  Mark Irvine, Esq.  <b>MENDES &amp; MOUNT, LLP</b>  445 South Figueroa Street, 38<sup>th</sup> Floor  Los Angeles, CA 90071</p>	<p>Telephone: 213.955.7780  Facsimile: 213.955.7725  <b>Attorneys for Defendant Goodrich Corporation</b></p>
<p>Steve Bell, Esq.  Beth M. Strosky, Esq.  Katherine L. Hilst, Esq.  <b>PERKINS COIE LLP</b>  1201 Third Avenue, Suite 4800  Seattle, WA 98101</p>	<p>Telephone: 206.359.8000  Facsimile: 206.359.9000  <b>Attorneys for Defendant The Boeing Company</b></p>

I also served the following party by overnight mail [Fed. Rule Civ. Proc. rule 5(b)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for, addressed as follows, for collection by UPS, at 12531 High Bluff Drive, Suite 100, San Diego, California, 92130-2040 in accordance with Morrison & Foerster LLP's ordinary business practices.

I am readily familiar with Morrison & Foerster LLP's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Morrison &

1 Foerster LLP's business practice the document(s) described above will be deposited in a box or  
 2 other facility regularly maintained by UPS or delivered to an authorized courier or driver  
 3 authorized by UPS to receive documents on the same date that it (they) is placed at  
 Morrison & Foerster LLP for collection.

4 Richard Chon, Esq. PERKINS COIE LLP 1620 26 <sup>th</sup> Street, Sixth Floor South Tower Santa Monica, CA 90404-4013	Telephone: 310.788.9900 Facsimile: 310.788.3399 <b>Attorneys for Defendant The Boeing Company</b>
7 Casey A. Kaufman, Esq. THE BRANDI LAW FIRM 354 Pine Street, 3 <sup>rd</sup> Floor San Francisco, CA 94104	Telephone: 415.989.1800 Facsimile: 415.989.1801 <b>Attorneys for Plaintiffs</b>

10 Executed at San Diego, California, on May 6, 2008.

11  
12 MORRISON & FOERSTER LLP

13 By: /s/ James W. Huston

14 James W. Huston  
 15 jhuston@mofo.com  
 16 Morrison & Foerster LLP  
 17 12531 High Bluff Drive, Suite 100  
 18 San Diego, California 92130-2040  
 Telephone: 858.720.5100  
 Facsimile: 858.720.5188  
 Attorneys for Defendant

19 Attorneys for Defendant  
 HONEYWELL INTERNATIONAL INC.